

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WAPATO HERITAGE, LLC, a Washington  
Limited Liability Company; KENNETH  
EVANS; JOHN WAYNE JONES; and JAMIE  
JONES, individual residents of  
Washington State,

Plaintiffs,

v.

SANDRA D. EVANS, an individual,  
not a resident of Washington  
State,

Defendant.

NO. CR-07-0314-EFS

**ORDER RULING ON PENDING  
MOTIONS AND DIRECTING  
ENTRY OF JUDGMENT**

This lawsuit's subject-the distribution of William Wapato Evans, Jr.'s estate ("Estate")-has been contested since his passing in 2003. Because the parties' most-recent settlement attempt was unsuccessful, the Court now directs entry of judgment in Plaintiffs' favor.<sup>1</sup> The Court

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<sup>1</sup> In the November 23, 2009 Order (Ct. Rec. [574](#)), the Court advised the parties that it was prepared to enter judgment but would wait until the anticipated mediation. The Court was advised that the parties' early January 2010 mediation was unsuccessful. Accordingly, the Court enters judgment.

1 first addresses the pending motions and then discusses entry of the judgment

2 **A. Defendant's First Amended Motion for Reconsideration**

3 Reconsideration is appropriate if the Court 1) is presented with  
4 newly-discovered evidence, 2) committed clear error or the initial  
5 decision was manifestly unjust, or 3) if there is an intervening change  
6 in controlling law. *United States v. Alexander*, 106 F.3d 874, 876 (9th  
7 Cir. 1997); *All Hawaii Tours, Corp. v. Polynesian Cultural Ctr.*, 116  
8 F.R.D. 645, 648 (D. Hawaii 1987), *rev'd on other grounds*, 855 F.2d 860  
9 (9th Cir. 1988). Only the second prong is at issue. Defendant submits  
10 that the Court made manifest errors of law by ruling: 1) that it has  
11 federal question jurisdiction to enforce the Settlement Agreement, 2)  
12 that federal law, not state law, governs interpretation of the Settlement  
13 Agreement, and 3) that federal-court enforcement of the Settlement  
14 Agreement does not interfere with tribal self-government.

15 The Court considered Defendant's legal arguments and the principles  
16 articulated by the cited cases, statutes, and regulations when ruling on  
17 the issue of federal jurisdiction. (Ct. Rec. [574](#).) As the Court set  
18 forth in its Order, this is not a "standard" settlement agreement  
19 interpretation case, rather the Court was called to enforce the  
20 Settlement Agreement, which served to alter the testate distribution of  
21 Indian trust property and therefore was required to be approved by the  
22 Secretary of the Interior. Analysis of the enforcement of this  
23 Settlement Agreement required the application of federal law and  
24 principles. For the reasons set forth in the Court's November 23, 2009  
25 Order, the Court abides by its conclusion that Plaintiffs' claims present  
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1 a federal question that is properly before this Court. Defendant's  
2 reconsideration motion is denied.

3 **B. Plaintiffs' Motion for Sanctions Pursuant to FRCP 11**

4 Plaintiffs ask the Court to 1) declare that defense counsel Mary  
5 Wynne and/or Defendant violated Federal Rule of Civil Procedure 11 by  
6 challenging subject matter jurisdiction and contending that the Colville  
7 Tribal Court is the only court with subject matter jurisdiction to  
8 enforce the Settlement Agreement and 2) impose appropriate sanctions.  
9 Although the Court abides by its subject matter jurisdiction findings,  
10 the Court does not find a Rule 11 violation and therefore denies  
11 Plaintiffs' motion.

12 **C. Plaintiffs' Motion for Judgment Declaring Evans' Rights in Estate**  
13 **to be Forfeited and Terminated**

14 Plaintiffs argue that Defendant's rights, title, and interest in the  
15 Estate should be forfeited as a matter of law because she challenged the  
16 July 2006 Settlement Agreement, which allegedly incorporated the May 2003  
17 Will's No-Contest Clause. Defendant counters that either 1) this issue  
18 is not properly before the Court, or 2) the No-Contest Clause was not  
19 incorporated into the Settlement Agreement. As set forth below, the  
20 Court agrees that this issue is not properly before the Court and  
21 therefore does not resolve whether the No-Contest Clause was incorporated  
22 into the Settlement Agreement.

23 Plaintiffs initiated this action in October 2007. The Complaint  
24 does not allege either that Defendant violated the Will's No-Contest  
25 Clause or that Defendant's rights in the Estate should be forfeited.

1 Plaintiff's August 2008 discovery responses did state that one of their  
2 "back-up damage theories" involved Defendant's alleged violation of the  
3 Will's No-Contest Clause. (Ct. Rec. [493](#) at 7.) But in March 2009, the  
4 Court directed the parties to file notices no later than May 5, 2009,  
5 identifying which previously-plead claims and/or affirmative defenses  
6 would be adjudicated at trial. (Ct. Rec. [261](#) at 3.) Defendant timely  
7 filed her notice. (Ct. Rec. [287](#).) So did former Defendant Dan Gargan.  
8 (Ct. Rec. [288](#).) Plaintiffs filed nothing, meaning neither the Court nor  
9 Defendant knew what claims beyond those set forth in the Complaint  
10 Plaintiffs were still pursuing.

11 Although the No-Contest Clause occasionally was at issue during  
12 discovery, Plaintiffs first requested documentary discovery specific to  
13 the No-Contest Clause via informal letter on July 22, 2009. (Ct. Rec.  
14 [464](#)-2, Ex. E-1.) Plaintiffs first formally raised the No-Contest Clause  
15 as an eligible trial issue in their July 21, 2009 submission (Ct. Rec.  
16 [401](#)) identifying potential trial issues-less than two weeks before the  
17 then-scheduled August 3, 2009 trial. Due to a death in the family and  
18 trial conflicts, the Court eventually reset the trial to October 15,  
19 2009. (Ct. Rec. [470](#).)

20 The Court determines Defendant was not formally notified that  
21 Plaintiffs would be pursuing the No-Contest Clause issue at trial until  
22 late-July 2009. Plaintiffs did provide Defendant with informal notice  
23 through routine discovery. But Plaintiffs ignored the Court-ordered  
24 Notice of To-Be-Adjudicated Claims/Defenses filing deadline, which  
25 occurred at the close of discovery. The purpose of this Notice is to put  
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1 each party - and the Court - on formal notice of what claims the parties  
2 are still pursuing at the completion of discovery. Plaintiffs' failure  
3 to submit this document was relied on by Defendant as acknowledgment that  
4 the only claims Plaintiffs were pursuing were the claims in the  
5 Complaint. Thus, Defendant was not given an opportunity to conduct any  
6 last-minute discovery or engage in any formal motions practice on this  
7 issue.

8 In summary, Plaintiffs' alleged No-Contest Clause violation is not  
9 properly before the Court. Plaintiffs' Motion for Judgment Declaring  
10 Evans' Rights in Estate to be Forfeited and Terminated (Ct. Rec. [453](#)) is  
11 denied.

12 **D. Plaintiffs' Motion to Declare Rights in '05 4th Quarter MA-10**  
13 **Payments**

14 Plaintiffs argue that the Settlement Agreement and bank records  
15 unequivocally establish their ownership in 80% of the 2005 4th Quarter  
16 MA-10 payments. Defendant contends that the very same documents  
17 establish her ownership in the same monies.

18 On November 9, 2005, Bureau of Indian Affairs (BIA) Office of  
19 Hearings and Appeals (OHA) Probate Judge M.J. Stancampiano entered an  
20 Order approving a division of the Estate between Plaintiffs and  
21 Defendant. The Order directed all income paid into the Estate account  
22 on or before January 10, 2006, to be distributed 80/20 between Plaintiffs  
23 and Defendant, respectively. "Any income which may have been paid into  
24 the [E]state account **after January 10, 2006**, should immediately be  
25 transferred to [Defendant]." (Emphasis added.) At issue is when the  
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1 fourth quarter MA-10 proceeds were deposited into the Estate account.  
2 Monies deposited into the Estate account on or before January 10, 2006,  
3 are divided 80/20 between the parties; monies deposited into the Estate  
4 account after January 10, 2006, were to go to Defendant.

5 On January 3, 2006, Wright-Wapato, Inc. sent four checks totaling  
6 \$166,982.96 to the BIA. These checks represented rent for MA-10 for the  
7 fourth quarter of 2005. The checks arrived at the BIA's Colville Branch  
8 on Friday, January 6, 2006. The checks were processed on Monday, January  
9 9, 2006, and deposited into the Estate account on Wednesday, January 11,  
10 2006.

11 Judge Stancampiano's Order makes clear - and the parties agreed -  
12 that only funds "**in the** decedent's Individual Indian Money (IIM) estate  
13 **account** as of January 10, 2006" were to be divided 80/20 between the  
14 parties. (Ct. Rec. [331](#)-2, Ex. C at 40 (emphasis added.)) Seeking  
15 clarification on this very issue, Judge Stancampiano posed the following  
16 question to the BIA's Office of Special Trustee (OST): "When were [the  
17 four (4) checks] actually deposited into the decedent's IIM account?"  
18 (Ct. Rec. [485](#), Ex. A.) The OST provided a straightforward response:  
19 "Funds deposited into the Estate account on January 11, 2006." *Id.* To  
20 rebut the OST's statement, Plaintiffs cite to various trust regulations  
21 stating that trust funds are deposited into trust accounts within twenty-  
22 four hours of receipt. (Ct. Rec. [483](#) at 8.) But as Defendant  
23 highlights, the BIA's apparent failure to adhere to these regulations  
24 raises, at best, an issue of potential third-party liability for the  
25 deposit delay.

1 In summary, Plaintiffs' motion is denied because the MA-10 proceeds  
2 for the fourth quarter of 2005 were appropriately paid to Defendant.

3 **E. Entry of Judgment in Plaintiffs' Favor**

4 After resolving these outstanding motions, the Court is prepared to  
5 enter judgment. Judgment may be entered without a trial because 1) the  
6 Court previously found that a) Defendant breached the Settlement  
7 Agreement's "loan" requirement and implied covenant of good faith and  
8 fair dealing by retaining 100% of the MA-10 income and b) Defendant's  
9 continued refusal to "lend" Wapato Heritage, LLC 35% of the MA-10 income  
10 evidenced wilful repudiation of her future loan obligations under the  
11 Settlement Agreement (Ct. Rec. [428](#)), and 2) the parties agreed that  
12 damages can be calculated by simple mathematical computations.

13 1. Damages

14 Because the Settlement Agreement required Defendant to loan  
15 Plaintiff Wapato Heritage, LLC 35% of the loan proceeds from January 2006  
16 to December 2006, and Defendant has failed to do, Plaintiff Wapato  
17 Heritage, LLC is entitled to principle damages in the amount of  
18 \$1,355,099.62.<sup>2</sup> Plaintiff Wapato Heritage, LLC is also entitled to  
19 prejudgment and post-judgment interest at the federal rates.  
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21 <sup>2</sup> This number is based on 1) the undisputed fact that 35% of the  
22 MA-10 monies from the first quarter of 2006 through the second quarter  
23 of 2009 totals \$1,191,500.94 and 2) the amount deposited into the Court  
24 registry, representing 35% of the MA-10 monies for the third quarter of  
25 2009 (\$85,979.17) and the fourth quarter of 2009 (77,619.51).  
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1 Accordingly, Plaintiff's Motion for Entry of Judgment for General Damages  
2 Against Defendant Evans (Ct. Rec. [459](#)) is granted.

3 2. Equitable Remedies

4 Plaintiffs requested specific performance (i.e., an order compelling  
5 Defendant to honor her obligations under the Settlement Agreement) and  
6 injunctive relief (i.e., an order preventing Defendant Evans from further  
7 delaying payments under the Settlement Agreement). The Court finds legal  
8 remedies (damages) adequately protect Plaintiffs for Defendant's pre-  
9 judgment breaches. However, because it is unknown what the MA-10  
10 proceeds will be for the remainder of the five-year period, legal  
11 remedies are inadequate for Defendant's post-judgment anticipatory  
12 breaches of the Settlement Agreement. See Williston on Contracts, § 67:8  
13 (2009) (recognizing that equitable remedies are only appropriate if legal  
14 remedies are inadequate); see also *Lucente v. IBM Corp.*, 310 F.3d 243 (2d  
15 Cir. 2002). Therefore, in regards to the remaining loan payments for the  
16 five-year period (all quarters of 2010), the Court orders Defendant to  
17 ensure that BIA OST has the necessary documents to allow 35% of the MA-10  
18 monies deposited into her IIM account to be deposited into the Court  
19 registry. The Clerk of Court will then promptly pay this amount to  
20 Wapato Heritage, LLC. The Court retains jurisdiction to ensure that  
21 Defendant complies with her loan obligation for the full five-year  
22 period.

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**F. Conclusion**

For the reasons set forth above, **IT IS HEREBY ORDERED:**

1. Plaintiffs' Motion for Judgment Declaring Evans' Rights in Estate to be Forfeited and Terminated (**Ct. Rec. 453**) is **DENIED**.

2. Plaintiffs' Motion for Entry of Judgment for General Damages Against Defendant Evans (**Ct. Rec. 459**) is **GRANTED**.

3. Plaintiffs' Motion to Declare Rights in '05 4th Quarter MA-10 Payments (**Ct. Rec. 482**) is **DENIED**.

4. Defendant's First Amended Motion for Reconsideration (**Ct. Rec. 580**) is **DENIED**. Defendant's initial Motion for Reconsideration (**Ct. Rec. 579**) is **DENIED AS MOOT**.

5. Plaintiffs' Motion for Sanctions Pursuant to FRCP 11 (**Ct. Rec. 582**) is **DENIED**.

6. **Judgment is to be entered** as follows:

Under the terms of the Settlement Agreement, as interpreted by BIA OHA Judge Stancampiano, Defendant Evans is required to loan, for a five-year-period beginning January 1, 2006, 35% of the MA-10 monies deposited into her IIM account to Wapato Heritage, LLC. This is to be accomplished by:

- a) For MA-10 monies received for January 1, 2006, through the fourth quarter of 2009: Defendant Evans is liable for the following amounts to Plaintiff Wapato Heritage, LLC:
- \$1,355,099.62 in principle;
  - federal prejudgment interest in the amount of 7.4%, compounded annually; and

- federal post-judgment interest in accordance with 28 U.S.C. § 1961.

b) For MA-10 monies received during 2010: Defendant shall ensure that the OST has the necessary and complete documents, including OST 01-004/6, W-9, and Power of Attorney (if necessary), to allow OST to forward 35% of the MA-10 monies deposited into Defendant's IIM account to the Court Registry. See Ct. Rec. 610 for guidance.

7. The funds currently deposited in the Court Registry relating to this case shall be promptly paid to Plaintiff Wapato Heritage, LLC. Upon receipt of these funds, Plaintiff Wapato Heritage, LLC shall file a partial satisfaction of this judgment.

8. Any future funds received from the OST relating to this case shall be promptly forwarded to Plaintiff Wapato Heritage, LLC by the Clerk of Court.

9. The Court retains jurisdiction to ensure that Defendant complies with her loan obligation for the full five-year period.

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S/ Edward F. Shea  
EDWARD F. SHEA  
United States District Judge

ORDER  $\sim 11$